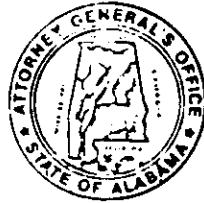


OFFICE OF THE ATTORNEY GENERAL

83-00174



CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA
FEB 6 1983

JAMES R. SOLOMON, JR.
DEPUTY ATTORNEY GENERAL

WILLIAM M. BEKURS, JR.
EXECUTIVE ASSISTANT

WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL

JANIE NOBLES
ADMINISTRATIVE ASSISTANT

ADMINISTRATIVE BUILDING
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 834-5150

Honorable Murray C. Ballard
Mayor
City of Hamilton
P. O. Box 188
Hamilton, Alabama 35570

Municipalities - Streets - Private Work

1. City cannot construct or maintain private driveways or ditches unless there is class legislation allowing city to do such work and providing a certainty of reimbursement to the city for labor, materials and equipment used.

2. City can do work on private property that is causing damage or a safety or health hazard. The cost of such work must be assessed against the property owner.

3. Act No. 79-259 cannot be used by the City of Hamilton to do work on private driveways.

Dear Mayor Ballard:

Reference is made to the request by the City of Hamilton for an opinion of the Attorney General regarding work done by that City on private property including driveways.

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As your first and second questions you asked:

- "1. Whether or not the City of Hamilton can maintain private drives. This includes gravel drives that need grading by a motorgrader. There are no private concerns in the City of Hamilton that own or operate a motorgrader, so there is no one to grade these drives.
2. Whether or not the City of Hamilton can construct new drives."

Section 94 of the Constitution of Alabama, 1901 as amended by Amendment No. 112 prohibits a city from giving money or any other thing of value in aid of a private person, association or corporation. The Attorney General has concluded on many occasions that this provision does not allow a municipality to do work on private property at the cost to the city. A large number of these Attorney General's opinions concerned the prohibition of work on private driveways with the city paying all costs. Opinion to Honorable Marilyn Quarles, State Representative dated February 14, 1978, and Opinion to the Honorable Ronnie Rampey, Mayor of the Town of Glencoe, dated May 12, 1978.

It has been concluded by the Attorney General that a municipality can do work on private property if there is class legislation permitting the municipality to do such work and providing for full reimbursement to the city for all labor, materials and equipment used. Also there must be a provision of certainty in the Act that the municipality will be reimbursed by the property owner. Therefore, unless there is such class legislation pertaining to the City of Hamilton,* that municipality cannot maintain or construct private driveways.

*See the answer to Question No. 5 presented herein.

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You presented as your third question:

- "3. Whether or not the City of Hamilton can do work on private property that is causing damage or a safety hazard to a City street."

In an opinion of the Attorney General to the Honorable Leamon Peppers, Mayor of the Town of Carrville, dated July 3, 1980, it was determined that the Town of Carrville could perform work to clean a ditch on private property if the ditch was posing a health hazard or public nuisance to the town. The opinion further stated that the cost of the work should be assessed against the property owner. Therefore, in answer to your question, the City of Hamilton can do work on private property that is causing damage or a safety hazard to a city street and the cost of such work must be assessed against the property owner.

The fourth question in your request was presented as follows:

- "4. Whether or not the City of Hamilton can cut ditches on private property to permit water to run into a City gutter or drainage."

This question is to be answered in the same manner as question number 3. If the water standing in a ditch on private property is causing a health hazard or a safety hazard, the city may cut the ditch to allow the water to run into a city gutter or drainage. The cost of such work is to be assessed against the property owner.

As your final question you asked:

- "5. Whether or not the City of Hamilton can use the enclosed Act No. 79-259 as a guideline for doing certain private work. Districts 1 and 2 of the Marion County Commission are within the City limits of Hamilton."

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Act No. 79-259 enacted at the 1979 Regular Session of the Legislature is a local act giving the Marion County Commission certain powers with regard to constructing and maintaining private roads and driveways. It provides for the cost of operating and constructing the private road or driveway to be paid by the property owner and requires the property owner to post a cash bond to insure payment of the cost. Although the City of Hamilton is located in Marion County, Act No. 79-259 cannot be used by that municipality to do work on private roads and driveways. There must be class legislation enacted by the Legislature in which the City of Hamilton is included, allowing cities in that class to do such work on private property.

I trust that your questions have been adequately answered.

If our office can be of further assistance, please let us know.

Sincerely,

CHARLES A. GRADDICK
Attorney General

BY:


LYNDA F. KNIGHT
Assistant Attorney General

LFK/dn